

SENATE BILL NO. 427

INTRODUCED BY L. MOSS

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A LICENSE FOR THE SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION PRECLUDES THE REMOVAL OF ALCOHOLIC BEVERAGES FROM THE PREMISES IN AN OPEN CONTAINER WITH CERTAIN EXCEPTIONS; AND AMENDING SECTIONS 16-3-105, 16-3-214, 16-3-301, 16-3-302, 16-3-411, 16-4-111, 16-4-202, 16-4-303, AND 16-4-420, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-3-105, MCA, is amended to read:

"16-3-105. Restrictions on alcoholic beverages in hotels. (1) Except in the case of alcoholic beverages kept or consumed in on premises for which a license has been granted under the law and which that form a part of a hotel, no a person shall may not:

(1)(a) keep or consume alcoholic beverages in any part of a hotel other than a private guest room;

(2)(b) keep or have any alcoholic beverage in any room in a hotel unless he the person is a bona fide guest of the hotel and is duly registered in the office of the hotel as an occupant of that room.

(2) A licensed premises in a hotel may not allow an alcoholic beverage in an open container to be taken off the premises for immediate consumption. A patron may remove a partially consumed bottle of wine from the premises if the wine is served in conjunction with the patron's meal and if the patron is not visibly intoxicated."

Section 2. Section 16-3-214, MCA, is amended to read:

"16-3-214. Beer sales by brewers -- sample room exception. (1) Subject to the limitations and restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year, upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the department as required by 16-4-101, must be licensed by the department, in accordance with the provisions of this code and rules prescribed by the department, to:

(a) sell and deliver beer from its storage depot or brewery located in Montana to:

(i) a wholesaler; or

1 (ii) any retail licensees who are entitled to purchase beer from a brewer under this code; or

2 (iii) the public; or

3 (b) provide its own products for consumption on its licensed premises without charge or, if it is a small
4 brewery, provide its own products at a sample room as provided in 16-3-213; or

5 (c) do any one or more of the acts of sale and delivery of beer as provided in this code.

6 (2) A brewery may not use a common carrier for delivery of the brewery's product to the public.

7 (3) An additional license fee may not be imposed on a brewery providing its own products on its
8 licensed premises for consumption on the premises.

9 (4) This section does not prohibit a brewer located outside of Montana from shipping and selling beer
10 directly to a wholesaler in this state under the provisions of 16-3-230.

11 (5) A sample room may not allow beer in an open container to be taken off the premises for immediate
12 consumption. This subsection does not prohibit the sale of beer for off-premises consumption in a container that
13 includes a screw-on resealable lid."

14
15 **Section 3.** Section 16-3-301, MCA, is amended to read:

16 **"16-3-301. Unlawful purchases, transfers, sales, or deliveries -- presumption of legal age.** (1) It
17 is unlawful for a licensed retailer to purchase or acquire beer from anyone except a brewer or wholesaler
18 licensed under the provisions of this code.

19 (2) It is unlawful for a licensed retailer to transport beer from one licensed premises or other facility to
20 any other licensed premises owned by the licensee.

21 (3) It is unlawful for any licensee, a licensee's employee, or any other person to:

22 (a) sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic
23 beverage to any person:

24 (a)(i) any person under 21 years of age; or

25 (b)(ii) any person actually, apparently, or obviously intoxicated; or

26 (b) allow an alcoholic beverage in an open container to be taken off the premises for immediate
27 consumption. A patron may remove a partially consumed bottle of wine from the premises if the wine is served
28 in conjunction with the patron's meal and if the patron is not visibly intoxicated.

29 (4) Any person under 21 years of age or any other person who knowingly misrepresents the person's
30 qualifications for the purpose of obtaining an alcoholic beverage from the licensee is equally guilty with the

licensee and, upon conviction, is subject to the penalty provided in 45-5-624. However, nothing in this section may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

(5) It is mandatory under the provisions of this code that all licensees display in a prominent place in their premises a placard, issued by the department, stating fully the consequences for violations of the provisions of this code by persons under 21 years of age.

(6) For purposes of 45-5-623 and this title, the establishment of the following facts by a person making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

(a) the purchaser falsely represented and supported with documentary evidence that an ordinary and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

(b) the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages; and

(c) the sale was made in good faith and in reasonable reliance upon the representation and appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages. (See compiler's comments for contingent termination of certain text.)"

Section 4. Section 16-3-302, MCA, is amended to read:

"16-3-302. Sale by retailer for consumption on premises. (1) It is lawful for a licensed retailer to sell and serve beer, either on draught or in containers, to the public to be consumed on the premises of the retailer. Subject to subsections (2) and (3), a licensed retailer may not allow beer in an open container to be taken off the premises for immediate consumption.

(2) It is lawful for a licensee who has an all-beverages license that ~~he~~ the licensee uses at a golf course to sell alcoholic beverages and for a licensee who has a golf course beer and wine license issued under 16-4-109 to sell beer and wine:

(a) in the building or other structural premises constituting the clubhouse or primary indoor recreational quarters of the golf course; and

(b) at any place within the boundaries of the golf course, from a portable satellite vehicle or other movable satellite device that is moved from place to place, whether inside or outside of a building or other structure.

(3) It is lawful to consume alcoholic beverages sold as provided in subsection (2) at any place within the boundaries of the golf course, whether inside or outside of a building or other structure."

Section 5. Section 16-3-411, MCA, is amended to read:

"16-3-411. Domestic winery. (1) A winery located in Montana and licensed pursuant to 16-4-107 may:

(a) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;

(b) sell wine it produces at wholesale to wine distributors;

(c) sell wine it produces at retail at the winery directly to the consumer for consumption on or off the premises;

(d) provide, without charge, wine it produces for consumption at the winery;

(e) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it produces;

(f) obtain a special event permit under 16-4-301; or

(g) perform those operations and cellar treatments that are permitted for bonded winery premises under applicable regulations of the United States department of the treasury.

(2) (a) A winery that is located in Montana and licensed pursuant to 16-4-107 and that has an annual production of 25,000 gallons or less of wine may sell wine to retail licensees that are licensed to sell wine under this code. A winery making sales to retail licensees under the provisions of this subsection (2) is considered a table wine distributor for the purposes of collecting taxes on table wine, as provided in 16-1-411.

(b) The winery may use a common carrier for delivery of the wine to licensed wine distributors and retailers. A shipment by common carrier is subject to the provisions of 16-3-106 and must be:

(i) in boxes that are marked with the words: "Wine Shipment From Montana Licensee to Montana Licensee";

(ii) made to the premises of a Montana-licensed wine distributor or retailer licensed by the state and who is in good standing; and

(iii) signed for by the wine distributor or retailer or its employee or agent.

(c) In addition to any records required to be maintained under 16-4-107, a winery that distributes wine within the state under this subsection (2) shall maintain records of all sales and shipments. The winery shall furnish monthly and other reports concerning quantities and prices of table wine that it ships in the state, names and addresses of consignees, and other information that the department may determine to be necessary to

1 ensure that distribution of table wines within this state conforms to the requirements of this code.

2 (3) A winery may not allow wine in an open container to be taken off the premises for immediate
3 consumption."

4
5 **Section 6.** Section 16-4-111, MCA, is amended to read:

6 **"16-4-111. Catering endorsement for beer and wine licensees.** (1) (a) A person who is engaged
7 primarily in the business of providing meals with table service and who is licensed to sell beer at retail or beer
8 and wine at retail for on-premises consumption may, upon the approval of the department, be granted a catering
9 endorsement to the license to allow the catering and sale of beer or beer and wine to persons attending a special
10 event upon premises not otherwise licensed for the sale of beer or beer and wine for on-premises consumption.
11 The beer or wine must be consumed on the premises where the event is held.

12 (b) A person who is licensed pursuant to 16-4-420 to sell beer at retail or beer and wine at retail for
13 on-premises consumption may, upon the approval of the department, be granted a catering endorsement to the
14 license to allow the catering and sale of beer and wine to persons attending a special event upon premises not
15 otherwise licensed for the sale of beer or beer and wine, along with food equal in cost to 65% of the total gross
16 revenue from the catering contract, for on-premises consumption. The beer or wine must be consumed on the
17 premises where the event is held.

18 (2) A written application for a catering endorsement and an annual fee of \$200 must be submitted to
19 the department for its approval.

20 (3) A licensee who holds a catering endorsement may not cater an event in which the licensee is the
21 sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

22 (4) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises
23 that the catered event is to be held. A fee of \$35 must accompany the notice.

24 (5) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions
25 of 16-6-103.

26 (6) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions
27 of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises sale of beer or
28 beer and wine on premises where the event is to be held.

29 (7) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at a
30 special event conducted on the premises of a county fairground or public sports arena authorizes the licensee

1 to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as well as from
2 a booth, stand, or other fixed place on the premises. The beer or wine must be consumed on the premises
3 where the event is held.

4 (8) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the
5 catered event unless the sponsor is the state of Montana, a political subdivision of the state, or a qualified entity
6 under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended."
7

8 **Section 7.** Section 16-4-202, MCA, is amended to read:

9 **"16-4-202. Resort retail all-beverages licenses.** (1) It is the intent and purpose of this section to
10 encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide
11 for the orderly growth of existing recreational sites by the establishment of resort areas within which retail
12 all-beverages licenses may be issued by the department under the terms of this section. In addition to the
13 licenses set forth in this code, the department may issue one resort retail all-beverages license for the first 100
14 accommodation units and an additional license for each additional 50 accommodation units in a resort area.
15 Regardless of how many resort area all-beverages licenses are issued, no more than 20 gambling machine
16 permits may be issued for the resort area.

17 (2) (a) For the purposes of this section, "resort area" means a recreational facility meeting the
18 qualifications determined by the department and as otherwise provided in this section.

19 (b) The term does not include any land or improvements that lie wholly within the boundaries of a quota
20 area as described in 16-4-201(1).

21 (3) The department shall determine that the area for which licenses are to be issued is a resort area
22 pursuant to rules.

23 (4) (a) In addition to the other requirements of this code, a resort area, for the purposes of qualification
24 for the issuance of a resort retail all-beverages license, must:

25 (i) have a current actual valuation of resort or recreational facilities, including land and improvements,
26 of not less than \$500,000, at least half of which valuation must be for a structure or structures within the resort
27 area;

28 (ii) be under the sole ownership or control of one person or entity at the time of the filing of the resort
29 area plat referred to in subsection (5);

30 (iii) contain a minimum of 50 acres of land;

1 (iv) contain a minimum of 100 overnight guest accommodation units, each unit capable of being
2 separately locked by the occupants and containing sleeping, bath, and toilet facilities; and

3 (v) provide on the grounds of the resort the recreational facilities that warrant the resort designation
4 being granted.

5 (b) For the purposes of this section, "control" means land or improvements that are owned or that are
6 held under contract, lease, option, or permit.

7 (5) The resort area must be determined by the resort area developer or landowner by a plat setting forth
8 the resort area boundaries and designating the ownership of the lands within the resort area. The plat must be
9 verified by the resort area developer or landowner and must be filed with the department prior to the filing of any
10 applications for resort retail all-beverages licenses within the resort area. The plat must show the location and
11 general design of the buildings and other improvements existing or to be built in the resort area. A master plan
12 for the development of the resort area may be filed by the resort area developer in satisfaction of this section.

13 (6) Within 7 days after the plat is filed, the department shall schedule a public hearing to be held in the
14 proposed area to determine whether the facility proposed by the resort area developer or landowner is a resort
15 area. At least 30 days prior to the date of the hearing, the department shall publish notice of the hearing in a
16 newspaper published in the county or counties in which the resort area is located, once a week for 4 consecutive
17 weeks. The notice must include a description of the proposed resort area. Each resort area developer or
18 landowner shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs
19 of publication.

20 (7) Any person may present, in person or in writing, a statement to the department at the hearing in
21 opposition to or support of the plat.

22 (8) Within 30 days after the hearing, the department shall accept or reject the plat. If the plat is rejected,
23 the department shall state its reasons and set forth the conditions, if any, under which the plat will be accepted.
24 The decision of the department may be reviewed pursuant to the review procedure set forth in 16-4-406.

25 (9) Once filed with the department, the boundaries of a resort area may not be changed without:

26 (a) a hearing, noticed and conducted in the same manner as provided in subsections (6) and (7); and

27 (b) the prior approval of the department, determined according to public convenience and necessity.

28 (10) (a) When the department has accepted a plat and a given resort area has been determined,
29 applications may be filed with the department for the issuance of resort retail all-beverages licenses within the
30 resort area.

(b) Each applicant shall submit plans showing the location, appearance, and floor plan of the premises for which application for a resort retail all-beverages license is made.

(c) If an applicant otherwise qualifies for a resort retail all-beverages license but the premises to be licensed are still in construction or are otherwise incomplete at the time that application is made, the department shall issue a letter stating that the license will be issued at the time that the qualifications for a licensed premises have been met. The letter must set forth specific time limitations and requirements that the department may establish.

(11) In addition to the restrictions on sale or transfer of a license as provided in 16-4-204 and 16-4-404, a resort retail all-beverages license may not be sold or transferred for operation at a location outside of the boundaries of the resort area.

(12) A resort retail all-beverages license is not subject to the quota limitations set forth in 16-4-201, and if the requirements of this section have been met, a resort retail all-beverages license must be issued by the department on the basis that the department has determined that the license is justified by public convenience and necessity, in accordance with the procedure required in 16-4-207.

(13) A resort may not allow an alcoholic beverage in an open container to be taken off the premises for immediate consumption. A patron may remove a partially consumed bottle of wine from the premises if the wine is served in conjunction with the patron's meal and if the patron is not visibly intoxicated."

Section 8. Section 16-4-303, MCA, is amended to read:

"16-4-303. Special beer and table wine license for nonprofit arts organizations. (1) A nonprofit arts organization as defined in subsection (4) is entitled to a special beer and table wine license to sell beer and table wine to patrons of exhibitions, productions, performances, or programs sponsored or presented by the organization in a specific theatre or other appropriately designated place for on-premises consumption. The beer or table wine must be consumed on the premises where the event is held.

(2) The proceeds derived from sales of beer and table wine, except for reasonable operating costs, must be used to further the purposes of the organization.

(3) The department ~~shall~~ must have access to the organization's records to determine whether the organization is entitled to a license under this section.

(4) For the purposes of this section, the term "nonprofit arts organization" means an organization governed under Title 35, chapter 2, that is organized and operated for the principal purpose of providing artistic

1 or cultural exhibitions, presentations, or performances for viewing or attendance by the general public. Assets
2 of the corporation must be irrevocably dedicated to the activities for which the license is granted and, on the
3 liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of
4 a member or individual except a nonprofit organization, association, or corporation. An artistic or cultural
5 exhibition, presentation, or performance includes:

6 (a) an exhibition or presentation of works of art or objects of cultural or historical significance, such as
7 those commonly displayed in art or history museums; and

8 (b) a musical or dramatic performance or series of performances.

9 (5) A license issued under this section is not subject to the provisions of 16-4-105."
10

11 **Section 9.** Section 16-4-420, MCA, is amended to read:

12 **"16-4-420. Restaurant beer and wine license.** (1) The department shall issue a restaurant beer and
13 wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the
14 requirements of this section, meets the following qualifications and conditions:

15 (a) in the case of an individual applicant:

16 (i) the applicant's past record and present status as a purveyor of alcoholic beverages and as a
17 business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance
18 with all applicable laws of the state and local governments; and

19 (ii) the applicant is not under 19 years of age;

20 (b) in the case of a corporate applicant:

21 (i) in the case of a corporation listed on a national stock exchange, the corporate officers and the board
22 of directors must meet the requirements of subsection (1)(a);

23 (ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or more of
24 the outstanding stock must meet the requirements for an individual listed in subsection (1)(a); and

25 (iii) the corporation is authorized to do business in Montana;

26 (c) in the case of any other business entity, including but not limited to partnerships, including limited
27 liability partnerships, limited partnerships, and limited liability companies, but not including any form of a trust:

28 (i) if the applicant consists of more than one individual, all individuals must meet the requirements of
29 subsection (1)(a); and

30 (ii) if the applicant consists of more than one corporation, all corporations listed on a national stock

1 exchange must meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock
2 exchange must meet the requirements of subsection (1)(b)(ii);

3 (d) the applicant operates a restaurant at the location where the restaurant beer and wine license will
4 be used or satisfies the department that:

5 (i) the applicant intends to open a restaurant that will meet the requirements of subsection (6) and
6 intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of
7 operation is expected to be the result of the sale of food;

8 (ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the
9 restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be
10 stated on the food bill; and

11 (iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the
12 department by rule;

13 (e) the applicant understands and acknowledges in writing on the application that this license prohibits
14 the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines
15 and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine
16 license will be used, the activity must be discontinued or the machines must be removed before the restaurant
17 beer and wine license takes effect; and

18 (f) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current
19 seating capacity if the restaurant is operating.

20 (2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic
21 beverage may not be considered for a restaurant beer and wine license at the same location.

22 (b) A restaurant that sells its existing retail license may not apply for a license under this section for a
23 period of 1 year from the date that license is transferred to a new purchaser.

24 (3) A completed application for a license under this section and the appropriate application fee, as
25 provided in subsection (11), must be submitted to the department. The department shall investigate the items
26 relating to the application as described in subsections (3)(a) through (3)(d). Based on the results of the
27 investigation and the exercise of its sound discretion, the department shall determine whether:

28 (a) the applicant is qualified to receive a license;

29 (b) the applicant's premises are suitable for the carrying on of the business;

30 (c) the requirements of this code and the rules promulgated by the department are complied with; and

1 (d) the seating capacity stated on the application is correct.

2 (4) An application for a beer and wine license submitted under this section is subject to the provisions
3 of 16-4-203, 16-4-207, and 16-4-405.

4 (5) If a premises proposed for licensing under this section is a new or remodeled structure, then the
5 department may issue a conditional license prior to completion of the premises based on reasonable evidence,
6 including a statement from the applicant's architect or contractor confirming that the seating capacity stated on
7 the application is correct, that the premises will be suitable for the carrying on of business as a bona fide
8 restaurant, as defined in subsection (6).

9 (6) For purposes of this section, "restaurant" means a public eating place where individually priced
10 meals are prepared and served for on-premises consumption. At least 65% of the restaurant's annual gross
11 income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year
12 after a license is issued, the applicant shall file with the department a statement, in a form approved by the
13 department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from
14 the sale of food. The restaurant must have a dining room, a kitchen, and the number and kinds of employees
15 necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space
16 is intended for use as a full-service restaurant. A full-service restaurant is a restaurant that provides an evening
17 dinner meal.

18 (7) (a) (i) Subject to the conditions of subsection (7)(a)(ii), a restaurant beer and wine license may be
19 transferred, upon approval by the department, from the original applicant to a new owner of the restaurant if
20 there is no change of location, and the original owner may transfer location after the license is issued by the
21 department to a new location, upon approval by the department.

22 (ii) A new owner may not transfer the license to a new location for a period of 1 year following the
23 transfer of the license to the new owner.

24 (b) A license issued under this section may be jointly owned, and the license may pass to the surviving
25 joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person
26 or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property
27 upon the death of the owner in this state or in another state.

28 (c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of
29 the department, transfer a restaurant beer and wine license to a new owner.

30 (8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

1 (i) for a restaurant located in a quota area with a population of 20,000 persons or fewer, as the quota
2 area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that
3 quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area
4 pursuant to 16-4-105;

5 (ii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota
6 area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that
7 quota area is equal to or less than 50% of the number of beer licenses that may be issued in that quota area
8 pursuant to 16-4-105;

9 (iii) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota
10 area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that
11 quota area is equal to or less than 40% of the number of beer licenses that may be issued in that quota area
12 pursuant to 16-4-105; and

13 (iv) for a restaurant located in a quota area that is also a resort community, as the resort community is
14 designated by the department of commerce under 7-6-1501(5), if the number of restaurant beer and wine
15 licenses issued in the quota area that is also a resort community is equal to or less than 100% of the number
16 of beer licenses that may be issued in that quota area pursuant to 16-4-105.

17 (b) In determining the number of restaurant beer and wine licenses that may be issued under this
18 subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(iii), the
19 department shall round to the nearer whole number.

20 (c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota
21 area under subsections (8)(a)(i) through (8)(a)(iii), there must be a one-time adjustment of one additional license
22 for that quota area.

23 (d) If there are more applicants than licenses available in a quota area, then the license must be
24 awarded by lottery as provided in subsection (9).

25 (9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses
26 under this section or as the result of an increase in the population in the quota area, the nonrenewal of a
27 restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department
28 shall advertise the availability of the license in the quota area for which it is available. If there are more applicants
29 than number of licenses available, the license must be awarded to an applicant by a lottery.

30 (b) Any applicant who operates a restaurant that meets the qualifications of subsection (6) for at least

1 12 months prior to the filing of an application must be given a preference, and any unsuccessful lottery
2 applicants from previous selections must also be given a preference. An applicant with both preferences must
3 be awarded a license before any applicant with only one preference.

4 (c) The department shall numerically rank all applicants in the lottery. Only the successful applicants
5 will be required to submit a completed application and a one-time required fee. An applicant's ranking may not
6 be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the
7 intended license advertised by the department or to the number of licenses determined under subsection (8)
8 when there are more applicants than licenses available. The applicant's qualifications for any other restaurant
9 beer and wine license awarded by lottery must be determined at the time of the lottery.

10 (10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises
11 consumption and the licensee may not allow beer or wine in an open container to be taken off the premises for
12 immediate consumption. A patron may remove a partially consumed bottle of wine from the premises if the wine
13 is served in conjunction with the patron's meal and if the patron is not visibly intoxicated.

14 (11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20%
15 of the initial licensing fee. If the department does not make a decision either granting or denying the license
16 within 4 months of receipt of a complete application, the department shall pay interest on the application fee at
17 the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any
18 period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or
19 16-4-207. If the department denies an application, the application fee, plus any interest, less a processing fee
20 established by rule, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay
21 the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the
22 following schedule:

23 (a) \$5,000 for restaurants with a stated seating capacity of 60 persons or less;

24 (b) \$10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

25 (c) \$20,000 for restaurants with a stated seating capacity of 101 persons or more.

26 (12) The annual fee for a restaurant beer and wine license is \$400.

27 (13) If a restaurant licensed under this part increases the stated seating capacity of the licensed
28 restaurant or if the department determines that a licensee has increased the stated seating capacity of the
29 licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the
30 time of filing the original application and issuance of a license and the applicable fees for the additional seating.

1 (14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101
2 persons or more may not exceed 25% of the total licenses issued.

3 (15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming
4 or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a
5 restaurant beer and wine license."

6 - END -